



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

DEC -6 2002

Paper No. 9

In re Application of :
Wyatt Price Hargett, Jr. *et al* : DECISION ON PETITION
Application No. 09/668,811 :
Filed: September 23, 2000 :
Attorney Docket No. 1700.80A :

This is a decision on the petition filed on October 25, 2002 which is being treated under 37 CFR 1.181 as a request for withdrawal of the holding that this application stands abandoned for failure to file a reply to the Office letter dated February 12, 2002. No fee is required for the petition, and the \$110.00 petition fee submitted with the petition will be refunded.


It appears that petitioners filed on Information Disclosure Statement (IDS) on March 13, 2001. Prior to issuing an Office action on the merits of this application, the examiner promulgated a letter noting that the IDS was deficient, and setting "a time period of 30 days for compliance" with the examiner's requirement to correct the deficiency.

It is totally unclear whether the examiner set a shortened statutory time period triggering the necessity of a reply to forestall abandonment (see 35 USC §§ 132 and 133), or a time limit for compliance under 37 CFR 1.135(c) which would not result in abandonment if no reply is filed (see 37 CFR 1.135(c) and MPEP § 710.02(d)). Perhaps if the examiner had used the appropriate form paragraph 6.51 as set forth in MPEP § 609, it would have been clear that the appropriate practice of setting a time limit was being followed.

In any event, petitioners in fact filed a reply to the March 13, 2001. Petitioners have furnished a copy of that reply as an attachment to the petition. The reply bears a 37 CFR 1.8(a) certificate of mailing dated March 12, 2002, well within the time set for reply to the examiner's requirement. It is clear, therefore, that whatever the examiner's intention was with respect to the setting of a "time period of 30 days for compliance", petitioners in fact complied and this application was not in fact abandoned.

Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the Head Supervisory Applications Examiner to refund the \$110.00 petition fee. Thereafter, the application will be forwarded to the Supervisory Patent Examiner of Art Unit 3727 who will ensure that the application receives a prompt first action which reflects consideration of the IDS that is attached to the petition.

PETITION GRANTED.


E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

Refund Ref:
12/18/2002 EBEMBRY 0000123110

Summa & Allan, P.A.
11610 North Community House Road
Suite 200
Charlotte, NC 28277

CHECK Refund Total: \$110.00